

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-259

April 30, 1999

PUBLIC UTILITIES COMMISSION,
Investigation of Northern Utilities, Inc.'s
Decision to Terminate Agreement with
Affiliate, Granite State Gas Transmission
Company, for LNG Services
(§ 707 and § 1303)

NOTICE OF INVESTIGATION

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We open a proceeding to investigate Northern Utilities, Inc.'s (Northern) decision to terminate its agreement with its affiliate, Granite State Gas Transmission Company (Granite), to purchase liquified natural gas (LNG) services from its proposed facility in Wells, Maine.

II. BACKGROUND

By Order dated August 9, 1996, we approved a Precedent Agreement executed by Northern and Granite in which Northern agreed to purchase 2 Bcf of LNG storage capacity and related injection and withdrawal services from its affiliate, Granite, for a term of 20 years. See *Northern Utilities, Inc., Proposed Precedent Agreement with Granite State Gas Transmission, Inc. for LNG Storage Service*, Docket No. 95-480, Order (MPUC Aug. 9, 1996). In doing so, we found that the agreement was a prudent, economic resource option both for short-term base load and long-term peaking supply where Northern contracted to sell excess capacity at advantageous rates, at then-current cost estimates of \$50.4 million. *Id.*

In our Order, we indicated that we would continue to review Northern's management of its supply and resource portfolio, including Northern's efforts to release, decontract, or otherwise sell excess capacity from any source, and that Northern was obligated to use its best efforts to continue to pursue beneficial opportunities to optimize its resource portfolio. *Id.* at 60. In addition, we indicated that we retained full authority to rule on the timing, amount, method or desirability of stranded cost recovery for any resource acquisition made by the Company under that or any other order of the Commission. *Id.*

In May, 1998, after an intensive review fueled by local opposition, the Federal Energy Regulatory Commission (FERC) awarded a certificate of public convenience and necessity to Granite. See *Granite State Transmission, Inc.* Docket No.

CP96-610-000, Order Issuing Certificate (FERC May 27, 1998). The FERC based its finding of market need for the facility on Northern's agreement to contract for the full amount of the facility for a 20-year term. *Id.* at 11. The FERC conditioned its certificate, and suspended construction authority, until Granite and Northern execute and file a firm contract. *Id.* The FERC also relied on the fact that two state public service commissions had taken a "harder look" at the relationship between the buyer and seller, as affiliates. *Id.* at 34.

In November of 1998, we also indicated that all decision points reached by Northern since our initial approval of the Precedent Agreement in August 1996 would be scrutinized and that only prudently incurred, fully-mitigated costs would be allowed in rates. See *Richard Clark et al v. Northern Utilities, Inc.*, Docket No. 98-029 (MPUC Nov. 19, 1998). In that docket, we required Northern to report bi-monthly on its ongoing resource plans involving the proposed Granite LNG facility in Wells, Maine. *Id.* Northern filed summary reports in January and March, 1999.

On March 5, 1999, Granite filed a request with FERC for a declaratory order confirming that Granite may collect a contractual exit fee from Northern for all project development costs through May 31, 1999. *Granite State Gas Transmission Company*, Docket No. CP99-238-000 (FERC Notice of Proceeding dated March 5, 1999). Granite also requests permission to surrender its certificate for the facility if it is granted recovery of \$11.6 million in costs plus carrying costs from Northern.

Northern asserts that it has contracted for alternative pipeline and LNG services that are more economical than the service Granite would provide through its Wells LNG facility and, by letter dated February 16, 1999, requested that Granite release Northern from its obligation to execute the Storage Contract for service from the Wells facility.

III. DISCUSSION

The contractual arrangement between Northern and Granite for LNG services required our review because it is an affiliated transaction. Maine law requires that we find that such an arrangement is not adverse to the public interest. 35-A M.R.S.A. § 707. Arrangements between affiliates require a closer level of scrutiny because they do not carry within them the balance of interests that results from "arms-length" negotiation between two distinct entities.

In addition, we reviewed the arrangement to determine whether it was a prudent resource acquisition for Northern. At that time, Northern was facing a likely supply shortage for the 1998-1999 winter season due to the expiration of Granite's lease with the Portland Pipe Line. Granite's proposed LNG facility was designed to provide Northern with interim baseload supply until interstate pipeline supplies were available, and long-term peaking supply. In response to our concerns about potential excess capacity in the LNG facility, Northern presented contractual ownership-option and resale agreements with Gaz Metropolitain L. L. P. (GMLP) in support of its contention that excess capacity would not burden ratepayers in the long term.

We scrutinized Northern's resource alternatives, including the possibility of obtaining necessary supply from the Portland Natural Gas Transmission System (PNGTS) or the Maritimes & Northeast Pipeline, L.L.C. (MNE) and found the Precedent Agreement to be a reasonable supply resource for Northern at its total cost of \$50.4 million.

Northern now reports that it has identified and contracted for other supply alternatives that are significantly more economical. Consequently, by letter dated February 16, 1999, Northern requested that Granite release it from any obligation to commit further to the proposed Wells LNG facility. In addition, Northern agreed to pay Granite an amount equal to third-party and out-of-pocket costs, as well as AFUDC, incurred by Granite. By letter dated February 19, 1999, Granite accepted Northern's offered consideration and consented to release Northern from its obligations, but conditioned its acceptance on obtaining FERC approval for its arrangement with Northern.

In its filing with FERC, Granite contends that Northern is contractually bound to pay an exit fee pursuant to section 8.3 of the Storage Contract attached to the Precedent Agreement, although the Storage Contract has never been executed. Northern's proffered consideration is also based on that provision. See Feb. 16th letter. Whether this is a valid and binding legal basis for Northern's agreement to pay Granite is currently pending before the FERC.

The New Hampshire Public Utilities Commission has initiated a proceeding to investigate parallel issues falling under state jurisdiction. See *New Hampshire Public Utilities Commission Order of Notice*, Docket DG 99-050 (April 2, 1999). They intend to review Northern's resource decisions and its dealings with its affiliate on this matter.

Under Maine law, we must review and approve contracts or arrangements between affiliates. 35-A M.R.S.A. § 707. The "exit fee" agreement between Northern and Granite appears to constitute an affiliated transaction subject to our review and approval. Pursuant to section 707, we must determine that the arrangement is "not adverse to the public interest."

Further, before costs of this magnitude are passed on to ratepayers, the reasonableness of Northern's resource management decisions warrants investigation. While we reviewed and approved the original Precedent Agreement between Northern and Granite, we have not thoroughly and independently reviewed the events and Northern's management decisions since the time of our Order in August 1996. Northern's actions leading up to its decision to terminate the Precedent Agreement are of particular interest. It is necessary to explore the timing of Northern's decision to terminate its obligation to the proposed LNG facility to determine whether its resource management was handled reasonably and prudently. Shareholders, not ratepayers, must bear the costs of imprudent managerial decisions. While we found Northern's decision to enter the Precedent Agreement prudent in August 1996, we have not similarly examined in detail its decision to terminate the agreement in 1999.

Consequently, we open this docket to investigate Northern's proposed termination of the Precedent Agreement with Granite. We will begin this inquiry as a summary investigation pursuant to §1303(1) by conducting discovery and by monitoring related proceedings currently underway before the New Hampshire Public Service Commission. We will not take intervention requests at this time. Conducting a summary investigation will not limit our active participation as a party in the FERC proceeding initiated by Granite. We can begin a formal investigation pursuant to §1303(2) if such action becomes warranted.

Dated at Augusta, Maine, this 30th day of April, 1999.

BY ORDER OF THE COMMISSION

Raymond Robichaud
Assistant Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.